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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

10,733

FILE: B-194925

DATE: July 12, 1979

MATTER OF: Horne Health Care Inc.

DLG 02110

DIGEST:

Where contracting officer's improper rejection of low small business bidder as nonresponsible without referring matter to Small Business Administration for Certificate of Competency consideration is cured by subsequent referral to SBA, protest is moot and need not be considered, as SBA has conclusive authority to determine matters of small business' responsibility.

Horne Health Care Inc. (HHCI), a small business and the low bidder under invitation for bids (IFB) No. DABT-56-79-B-0020, issued by the Department of the Army for radiological services at DeWitt Army Hospital, protests its rejection as nonresponsible. A contract under the solicitation was awarded to the second low bidder, Association of Alexandria Radiologists (AAR), on May 10, 1979.

The Army concedes that the contracting officer improperly failed to refer the nonresponsibility determination to the Small Business Administration (SBA) for consideration under its certificate of competency (COC) program, as required by the Small Business Act, 15 U.S.C. § 637(b)(7) (1976), as amended by Pub. L. No. 95-89, 91 Stat. 557, effective August 4, 1977, and the implementing regulations at Defense Acquisition Regulation § 1-705.4 (1976 ed.).

DLG 02111

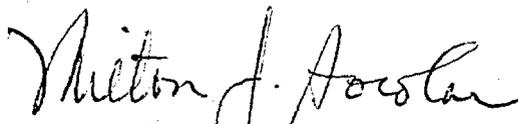
However, the Army advised that in response to the protest the required referral has now been made. The Army states that since the services are essential, AAR will continue contract performance until the SBA acts, and that whether the contract will be continued after that time will depend on the nature of the action. We assume that this means that if a COC is

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issued and HHCI will accept award for the balance of the contract term, the contract with AAR will be terminated for the convenience of the Government. If a COC is not issued or HHCI refuses such an award, no further action will be required. Hatcher Waste Disposal, B-193065, March 7, 1979, 79-1 CPD 157; The Forestry Account, B-193089, January 30, 1979, 79-1 CPD 68. In this connection, the SBA is empowered to certify conclusively to Government procurement officials with respect to all elements of a small business' responsibility. See Com-Data, Inc., B-191289, June 23, 1978, 78-1 CPD 459.

Inasmuch as the referral to SBA moots the protest, it is dismissed.

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Milton J. Socolar  
General Counsel